

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Scott Hutchison Enterprises, Inc., et al.	:	CASE NO: C-1-01-776
	:	
Plaintiffs	:	Judge Weber
	:	
vs.	:	
	:	
Rhodes, Inc., et. al.	:	
	:	
Defendants	:	

**MEMORANDUM IN SUPPORT OF MOTION REQUESTING MODIFICATION
OF THE COURTS ORDER OF AUGUST 18, 2005 TO ADD RULE 54(B)
LANGUAGE THAT “THERE IS NO JUST REASON FOR DELAY”
AND FOR A STAY OF THESE PROCEEDINGS PENDING APPEAL**

FRCP Rule 54(b) states that in the absence of an express determination the “there is no just reason for delay”, a judgment or order which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties, shall not terminate the action as to any of the claims or parties, but is subject to revision at any time before the entry of judgment adjudicating all the claims and rights and liabilities of all the parties. The Court’s Order of August 18, 2005 granting summary judgment in favor of the defendant, H.T. Boggs is such an order.

It is apparent, however, that if the parties proceed to trial of the remaining issues and parties, and the order granting summary judgment to Boggs is later reversed on appeal, it will be necessary to try the case again with Boggs as an active participant in the

trial. However an immediate appeal of the order granting summary judgment to Boggs, would determine once and for all whether Boggs is a necessary participant in the trial and avoid the prospect of trying the case twice. The efficacy of this is even more compelling in light of the fact that Boggs has pending cross claims against the defendants Zimmer, Geisler and Rhodes. Those claims would also best be tried, if at all, after it is known whether Boggs' summary judgment is affirmed or reversed on appeal. Granting this motion would provide a final determination as to whether defendant Boggs is in or out of the case, thereby avoid potentially duplicative proceedings.

Plaintiffs further request that the proceedings before this Court as to the remaining issues and parties be stayed pending any appeal.

Respectively submitted,

/s/ William P. Schroeder

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CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: E. David Marshall at edavidm@iglou.com; Gayle Benner McGrath at gmcgrath@wyattfirm.com; and Thomas Robert Schuck at schuck@taftlaw.com and **I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:**

Kevin J. Waldo, 413 Center Street, Ironton, OH 45638-1505; E. Christine Lewis, Wyatt Tarrant & Combs, LLP, 250 West Main Street, Suite 1600, Lexington, KY 40507-1746;

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/S/ William P. Schroeder

William P. Schroeder